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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,576	05/21/2007	Hanae Kaku	SHIMIZU-13111	3078
23535 MEDLEN & CA	7590 10/10/200 ARROLL. LLP	EXAMINER		
101 HOWARD SUITE 350		IBRAHIM, MEDINA AHMED		
SAN FRANCIS	SCO, CA 94105		ART UNIT	PAPER NUMBER
			1638	
			MAIL DATE	DELIVERY MODE
			10/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)				
Office Action Occurrence	10/591,576	KAKU ET AL.				
Office Action Summary	Examiner	Art Unit				
	Medina A. Ibrahim	1638	<u> </u>			
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence ad	ldress			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status						
1)⊠ Responsive to communication(s) filed on <i>08 Ju</i>	ly 2008.					
	action is non-final.					
3) Since this application is in condition for allowan	ice except for formal matters, pro	secution as to the	e merits is			
closed in accordance with the practice under E	closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims						
4) Claim(s) 1-16 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) 1-16 are subject to restriction and/or election requirement.						
Application Papers						
 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. 						
Priority under 35 U.S.C. § 119						
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 						
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	ite				

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DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-2, 4-10, and 14-16, drawn to a DNA encoding a protein having elicitor binding activity, a vector and a plant/seed comprising said DNA, and a plant transformation method.

Group II, claim(s) 3, drawn to a protein encoded by the DNA of claim 1.

Group III, claim(s)11-13, drawn to a pharmaceutical agent comprising the DNA of claim 1.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the DNA of claim 1 encoding a protein having chitin oligosaccharide elicitor binding activity, said protein comprises an amino acid substitution/deletion/addition of one or more amino acids in SEQ ID NO: 2 or 4 is known in the prior art as evidenced by Shibuya et al (MPMI (1998) 11:1167). Shibuya et al teach an isolated gene from rice encoding an elicitor binding protein. The DNA of claim 1 reads on the DNA of the prior art. Therefore, there is no special technical feature that links the invention of Group I to the invention of Group II or III.

In addition, the special technical feature of Group I that is not recited in Group II or III is considered to be DNA, vector, transgenic plant and a plant transformation method.

The special technical feature of Group II that is not recited in Group I or III is considered to be a protein.

The special technical feature of Group III that is not recited in Group I or II is considered to be a pharmaceutical agent.

Therefore, for all the reasons discussed above Inventions I-III lack unity.

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is (571)272-0797. The examiner can normally be reached on M-TH 8:00 am to 5:30 PM, and every other Friday from 8:00 AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAI 10/8/2008 /Medina A Ibrahim/ Primary Examiner, Art Unit 1638 Application Number

Application/Control No.	Applicant(s)/Patent under Reexamination KAKU ET AL.		
10/591,576			
Examiner	Art Unit		
 Medina A Ibrahim	1638		